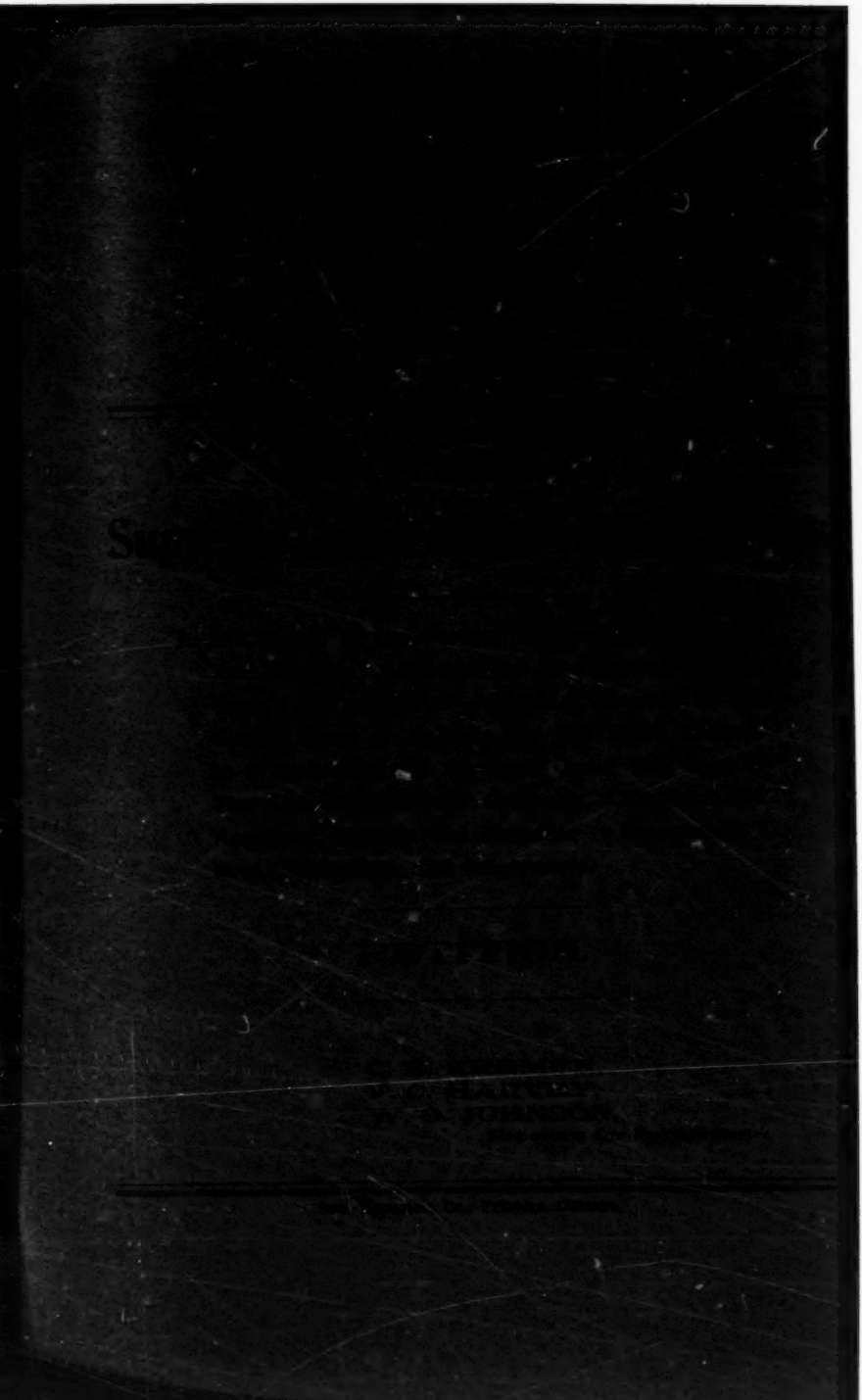

IN THE

Supreme Court of the United States

In the Matter of the Petition of The Union Steamboat Company, Claimants of the Steamer "New York," for a Writ of Certiorari Directed to the Circuit Court of Appeals for the Sixth Circuit, to bring before the Supreme Court the Case of The Union Steamboat Company, Claimant and Appellant, against the Propeller "Conemaugh" et al., Claimants and Intervenors.

PETITION.

To the Honorable Judges of the Supreme Court of the United States:

The said petitioner respectfully shows to this court as follows:

I. That your petitioner, the Union Steamboat Company, is a corporation and the owner of the propeller "New York."

II. The case grows out of a collision which occurred on the 21st day of October, 1891, in the Detroit river between the steamers "Conemaugh" and "New York," which resulted in the sinking of the steamer "Conemaugh."

III. At the October Term, 1899, this case was decided by this court, and reported under the title of *The New York*, 175 U. S., 187.

IV. Thereupon, the mandate of this court was issued to the District Court under date of January 22d, 1900.

V. On the 17th day of March, 1900, the parties entered into a stipulation, which provided that the damages sustained by all the parties in the case should be as follows:

Erie & Western Transportation Company, owners of propeller "Conemaugh"	$30,508.46
Erie & Western Transportation Company, trustees for underwriters on cargo other than intervenors	19,627.67
British & Foreign Marine Insurance Co., Ltd	2,421.84
The Insurance Company of North America	7,950.09
The Union Marine Insurance Company	8,553.06
The Marine Insurance Company, Ltd.	916.57
Union Steamboat Company, owners propeller "New York"	4,341.80
Total	$74,319.49

VI. On the 24th day of March, 1900, the District Court, in pursuance of the mandate, entered a decree, under which the Union Steamboat Company, as the owner of the propeller "New York," was to pay all the damages sustained by the intervenors and by libelant as bailee of the cargo, making all of the cargo damage, and also pay one-half of the damages sustained by the "Conemaugh" herself, less the amount of the damage to the "New York," so that the Union Steamboat Company would pay 76½ per cent.

of all the damages in the case, instead of 50 per cent. of the same.

VII. That thereupon, the Union Steamboat Company filed its petition in the Supreme Court, praying for a writ of mandamus, directed to the Judge of the District Court, and ordering him to set aside the decree, and to enter a decree, which would hold the owners of the "New York" for but one-half of the amount of the damages, and the doing of which, after allowing the contribution, there would still be an affirmative decree in favor of the libelant, the owners of the "Conemaugh," for $12,976.38.

This court issued an order to show cause, and upon the hearing, upon the petition and answer of the District Judge and briefs of counsel, the court on May 28, 1900, decided the case now reported as *Ex parte Union Steamboat Company*, 178 U. S., 317.

VIII. That thereupon this petitioner prayed an appeal to the Circuit Court of Appeals for the Sixth Circuit, and a hearing upon this was had, and the Circuit Court of Appeals filed its opinion, affirming the decision of the District Court opinion marked "A" attached to this petition.

IX. The pleadings in this case in the District Court were:

1. A libel by the owner of the steamer "Conemaugh" on behalf of itself and as bailee for the amount of her cargo, against the propeller "New York" to recover the damages sustained by the "Conemaugh" and her cargo, arising out of a collision between the "Conemaugh" and "New York."

2. An answer by the "New York" denying all liability and charging the fault of the collision against the "Conemaugh."

3. A cross libel by the "New York" to recover the damages sustained by the latter in the same collision.

4. After a finding by the District Court that the "New York" was solely at fault, an intervening petition by underwriters who had assured a part of the cargo of the "Conemaugh" against the "New York" alone.

5. A finding holding the "Conemaugh" and "New York" both at fault for the collision.

X. The decision of the Circuit Court of Appeals, as it stands, is contrary to the law and practice in the Courts of Admiralty of the United States, and practically nullifies the well settled rule, that in all cases of collision, when two vessels are concerned and both are found at fault, that the damages arising out of the collision be equally divided between the owners of the respective vessels, each paying one-half of the sum.

XI. The decision of the Court of Appeals practically nullifies the well settled rule, that whenever one of the vessels at fault is compelled to pay the whole of the damages of a third or innocent party, any amount above a moiety of such damages, which shall be paid by such vessel, can be recouped or set off against any claim for damages that the other vessel may have sustained by reason of the collision, so that each vessel (if she be of sufficient value) pay one-half of all the damages arising out of the collision.

XII. The decision of the Court of Appeals practically holds (as petitioner is informed and believes contrary to law), that under the law and practice in the Admiralty Courts of the United States, it is necessary to bring a libelant into court as a co-defendant under Admiralty Rule 59, in case an intervening petition is filed by a cargo owner, who was included by the original party libelant and first came into

court through the original libel by the vessel owner suing for himself and as bailee of the cargo.

The Circuit Court of Appeals further holds that even when all of the parties are before the court, either as libelants or claimants, and the court finds libelants' and claimants' vessels both at fault, further proceedings on behalf of the claimants in the form of cross petitions or cross libels are necessary, before the court can grant recoupment and divide the damages equally when the damages are awarded to an innocent intervening cargo owner.

XIII. The Circuit Court of Appeals practically holds that it is absolutely necessary for the record on appeal from the District Court to the Circuit Court of Appeals to show that recoupment had been demanded by the pleadings or otherwise in the District Court, and thus disregarding the law, which provides a trial *de novo* in all cases of appeal from the District to the Circuit Court of Appeals.

The Circuit Court of Appeals also holds that the proposed decree on behalf of the "New York" would be at the expense of the underwriters represented by libelant, whose claims aggregated $19,627.67, an amount exceeding the proposed decree in their favor by $6,651.29, and that such a recoupment was not in conformity with the mandate of this court, and that this court refused to compel the District Court to enter this proposed decree in the mandamus proceedings taken in this court.

In this petitioner alleges the court is in error, because this court did not refuse to compel the District Court to enter any particular decree, but simply decided that if the decree was not in conformity with the mandate, the proper remedy was by appeal and not by writ of mandamus, and the entry of such a decree, petitioner alleges, would simply make the libelant account for his bailment without loss to

the bailor or to libelant, because the former would get the full amount of his damages, and the latter would pay but one-half of all the damages.

Wherefore, your petitioner prays that this Honorable Court will be pleased to grant a writ of *certiorari* in this case to the Circuit Court of Appeals for the Sixth Circuit, to bring up this case to this Honorable Court for such proceedings as shall seem just.

..... Union Steamboat Co.
by B. E. Kremer
Proctor

United States of America,
~~State~~ ~~District~~ of ~~New York~~ Illinois, } ss.
County of ~~Erie~~ Cook }

.. Henry B. Ford ..... being duly sworn, deposes and says that he is the agent of the petitioner herein, the Union Steamboat Company; that said petitioner is a corporation; that deponent has read the foregoing petition and that the same is true to deponent's knowledge, information and belief, and deponent's knowledge is derived from the fact that he has been connected with petitioner in said litigation.

.. Henry B. Ford Agent

Subscribed and sworn to before me this 7th day of May, 1901.

(Notarial Seal)

Robert J. Folonie
Notary Public
Cook County
Ill

We hereby certify that we have examined the foregoing petition and in our opinion the petition is well founded and the case is one in which the prayer of the petitioner should be allowed.

O. E. Kremer

F. G. Harvey

"EXHIBIT A."

No. 889.

UNITED STATES CIRCUIT COURT OF APPEALS,

SIXTH CIRCUIT.

The Union Steamboat Co., Claimant of the Propeller "New York," *Appellant*, v. The Erie & Western Transportation Co. *et al.* *Appellee.*	Appeal from the District Court of the United States for the Eastern District of Michigan.

Submitted March 7, 1901.
Decided April 2, 1901.

Before LURTON and SEVERENS, Circuit Judges, and CLARK, District Judge.

In October, 1891, a collision occurred in the Detroit River between the steamers "Conemaugh" and "New York," which resulted in the sinking of the "Conemaugh," the total loss of her cargo, and in a slight loss to the "New York."

The Erie & Western Transportation Company, as owner of the "Conemaugh" and as bailee of her cargo, filed a libel in the District Court against the propeller "New York" to recover the damages sustained by the "Conemaugh" and for the damages to her cargo.

The Union Steamboat Company, as claimant and owner of the "New York," gave a stipulation for the release of the vessel and filed an answer denying all liability for the col-

lision and alleging that the steamer "Conemaugh" was solely at fault.

Subsequently, by leave of the court, the Union Steamboat Company filed its cross-libel *against the propeller "Conemaugh,"* to recover the sum of three thousand dollars alleged to be the damages sustained by the "New York," in the said collision with the "Conemaugh."

This cross-libel prayed process, but none issued, and no answer was ever filed thereto. Upon the reference to a commissioner to ascertain damages it was, among other things, stipulated, "that, in case the matter shall become material, "either in this court or in the Court of Appeals, the loss "suffered by the propeller 'New York,' in and by said col- "lision, was the sum of $3,391.19" as of November 1, 1891.

After the litigation had been started and at different dates various underwriters upon the "Conemaugh's" cargo intervened and filed separate intervening petitions against the Union Steamboat Company as owners of the "New York," seeking to recover insurance paid by them on said cargo. The remainder of the cargo owners and underwriters continued to be represented by the Erie & Western Transportation Company as trustee or bailee of the cargo claimants.

Upon a final hearing the District Court held the "New York" solely at fault and condemned her to pay all the loss sustained by the "Conemaugh" and all the damage to her cargo.

Upon appeal to this court that decree was reversed, the "Conemaugh" being held solely at fault and a decree was directed against the owners of the "Conemaugh" for the stipulated loss sustained by the "New York" in said collision. 54 U. S. App., 248, and 56 U. S. App., 146.

The case was then taken to the Supreme Court upon *cer-*

tiorari where the decree of this court was reversed, that court holding that both vessels were at fault, and that the loss to the vessels should be divided, but that the cargo owners or underwriters were entitled to recover their entire loss against the owners of the "New York," notwithstanding the "Conemaugh" might be also liable for the collision. The case was remanded for a decree in pursuance of the opinion of that court.

The case is reported under the style of *"The New York."* 175 U. S., 187. The District Court accordingly rendered a decree requiring the owners of the New York to pay all the damages sustained by the intervening cargo underwriters, aggregating $19,841.56, and that they should pay to the owners of the "Conemaugh," as trustee for the owners of the cargo and their underwriters "other than the intervenors," the further sum of $19,627.67, these two sums being the full loss sustained by the "Conemaugh's" cargo. The court also directed that the owners of the "New York" should pay to the owners of the "Conemaugh" the further sum of $13,083.33, "being one-half of the damage of the said 'Conemaugh,' less one-half the damage suffered by the 'New York' in said collision."

The Union Steamboat Company have assigned as error.

1st. That the court erred in not permitting the Union Steamboat Company to offset or recoup any part of the damages paid on account of loss or damage to the cargo of the steamer "Conemaugh," against the claim for damages sustained by the libelant as owner of the steamer "Conemaugh."

2d. That the court erred in allowing interest on the various sums decreed to be due the libelant and intervenors at the rate of 7 per cent.

3d. That the court erred in decreeing that the appellants

should pay one-half of the cost of the cause in the Circuit Court of Appeals.

LURTON, Circuit Judge, having made the foregoing statement of the case, delivered the opinion of the court.

1. That the decree appealed from conformed in every particular to the mandate of the Supreme Court has been expressly adjudicated under a petition filed in that court, prior to this appeal, praying that court, by writ of mandamus, to compel the District Court to set aside the decree here complained of and "to enter one dividing the damages equally, "so that petitioner would not be decreed to pay more than "one-half the total damages arising out of the collision be- "tween the 'New York' and 'Conemaugh,' with interest not "exceeding 5 per cent. per annum."

This was denied, the court saying:

> "The only questions decided were as to the respective faults of the two vessels, and the claim of the underwriters upon the 'Conemaugh's' cargo, that they were entitled to a recovery to the full amount of their damages against the 'New York,' notwithstanding the 'Conemaugh' was also in fault for the collision. This claim was sustained, and directions given to enter a decree in conformity to the opinion of this court. Such decree was entered, dividing the damages between the two vessels, and awarding to the underwriters of the cargo a full recovery against the 'New York.' It may be true that the decree holds the 'New York' liable for 76 per cent. of the entire damages and not 50 per cent., but this results from the fact that she was primarily held for the entire value of the cargo. The equal division applied only to the vessels, and upon the other hand if petitioner be entitled to the recoupment claimed, it would, apparently, result in an affirmative decree in its favor. But no question of recouping one-half of such damages to the cargo from the moiety of damages awarded the

'Conemaugh' was made by counsel or passed upon by this court. It is now insisted that, under the cases of *'The Chattahoochee,'* 173 U. S., 540, and *'The Albert Dumois,'* 177 U. S., 240, this should have been done. This may be so; but it is an entirely new question, quite unaffected by the case of the 'New York,' and if the court erred in refusing to allow such recoupment, the remedy is by appeal and not by mandamus. Perhaps a mandamus might lie to review the allowance of interest, but that may also be considered on appeal.

"No disobedience of the mandate having been shown, the petition must be denied." *Ex parte Union Steamboat Co.,* 178 U. S., 317, 320.

Referring to the general rule and not particularly to the case in hand, the Supreme Court, in the same opinion, said:

"The inferior court is justified in considering and deciding any question left open by the mandate and opinion of this court, and its decision upon such matter can only be reviewed upon a new appeal to the proper court."

Ibid., 319.

That this is the proper court to review the action of the District Court in respect to matters open to it to consider and decide, as matter subsequent to and not concluded by the mandate of the Supreme Court, we had occasion to decide at a former day of this session in an opinion reported in 104 F. R., 561, under the style of *"The New York."* See also *Mason* v. *Pewabic Mining Co.,* 153 U. S., 361.

For appellants it is contended, that the question of recoupment could not come on for decision until it was determined that both vessels were at fault and until the cargo owners and underwriters had recovered their full damages from appellant, and that the District Court had, therefore, when entering a decree under the mandate, the right to consider and decide whether or not appellant had then the right

13399

to recoup one-half of the cargo damages, it was thereby condemned to pay from the moiety of damages awarded the "Conemaugh;" and that any error committed by the District Court in denying or granting such recoupment may be reviewed here. To this view of the abstract question we are disposed to assent. But when and how was this matter of recoupment presented to the District Court? The decree which the court did enter was in precise conformity to the mandate of the Supreme Court. The cargo underwriters, having proceeded only against the "New York," were entitled to recover their full damages against it as the only vessel impleaded.

If the "New York" had availed itself of Admiralty Rule 59, as was done in the case of *"The Beaconsfield,"* 158 U. S., 303, 307, and brought in the "Conemaugh" as a vessel in fault which also ought to be proceeded against for cargo losses, the question of the liability of that vessel to cargo underwriters would have been presented and the cargo damages would have been divided, if it had been found that that vessel was also in fault for the collision and had no valid special stipulations in her bills of lading relieving her from liability to cargo underwriters.

But this course was not taken. By neither cross-bill, petition nor answer was this question of the "Conemaugh's" liability to cargo underwriters presented. Nor does it appear that the question of recoupment, now raised by an assignment of errors upon the decree of the District Court, was ever presented to that court by any form of pleading. Since this case was heard, the appellant has applied for leave to supplement the record by adding to it a decree which they prepared and submitted to the District Court as a decree in compliance with the mandate of the Supreme Court, whereby the

entire losses were equally divided between the vessels. That proposed decree is the decree which the Supreme Court refused to compel the District Court to enter when appellant applied to it for a writ of mandamus. In substance the insistence of the Union Steamboat Company was, that a decree should go against it for $19,841.56 in favor of cargo underwriters, who had intervened for themselves, and a decree in favor of the Erie & Western Transportation Company, as trustee for cargo underwriters represented by it, for $12,976.38. That result was reached in this way:

Libelant recovers of "New York" one-half of the damages sustained by the "Conemaugh"	$15,254 23	
Recovers one-half of the amount sustained by it as bailee of the cargo	8,813 83	$24,068 06
Less one-half of amount of intervenors' damages paid to cargo intervenors by "new York"	$8,920 78	
Less one-half of amount of damages sustained by "New York"	2,170 90	$11,091 68
		$12,976 38

While this plan avoided the necessity for an affirmative decree in favor of the appellant without any pleading asking such relief, it did so at the expense of the underwriters represented by the appellee, whose claims aggregated $19,627.67, an amount exceeding the proposed decree in their favor by $6,651.29.

This was clearly and distinctly inadmissible, as not conforming to the mandate of the Supreme Court, which directed that a decree should go against the "New York" for

the whole of the cargo damages, as the only vessel impleaded by cargo owners or underwriters. Such a decree was not in accordance with the mandate, as the Supreme Court expressly decided. 178 U. S., 317. The equal division directed by that court applied only to the vessels. No question of recoupment having been presented or decided by the Supreme Court, it was not competent for that court to compel the District Court to enter a decree which was not required by its original decision. It is now sought to inject that proposed decree into this record as a basis for assigning as error the failure by the District Court to allow recoupment in some form. The decree never was a part of the record in the court below, and the fact that it was ever proposed as a decree in compliance with the mandate of the Supreme Court can only be shown by evidence *de hors* the record. No pleading or oral application for recoupment, other than may be inferred from it, was ever made to the court below. It was submitted, not by way of an application to the power of that court over a matter subsequent to the mandate and not concluded, but as a decree required by the mandate. If it were here we could not regard it as an application for recoupment to be granted or refused on its merits as a matter subsequent to the mandate, but as an application based upon a misconception of the mandate. The application for a writ of *certiorari* is refused.

The right of set-off, or counterclaim, or recoupment, being in no way presented by any pleading in the case, was not so involved in the nature of the decree rendered as to make it error if the matter was passed *sub silentio*.

It was not a defense which the appellant was obliged to then present. The mere fact that there are cross de-

mands will not operate as an estoppel if in fact the cross demand was not presented and adjudicated.

A set-off or counterclaim is generally admissible in equity only when the circumstances are such as to justify the interference of equity to prevent injustice or avoid circuity of action.

Clearly it was not admissible to set off the decree in favor of the appellee as trustee for underwriters or cargo owners who had not intervened, by a claim against the appellee in a wholly different right. *Manhattan Insurance Co.* v. *McKown,* 33 C. C. A., 212.

Neither are we aware of any authority which would justify an affirmative decree upon a set-off in the absence of some pleading seeking such affirmative relief. *"The Dove,"* 91 U. S., 381, 384; *Washington Rd.* v. *Bradley,* 10 Wall., 299; *"The Ethel,"* 66 F. R., 140.

No issue having ever been made as to the liability of the "Conemaugh" to her cargo underwriters, it would seem altogether possible that an injustice might be done if it should be summarily assumed, that because she was found in fault and liable to the "New York" for one-half of her damages, that she is also liable to the underwriters upon her own cargo. Counsel for the "Conemaugh" say that there are special stipulations in her bills of lading which they write to set up against the claims of underwriters. Manifestly this court should not foreclose this defense upon a record which fails to show that any such right of set-off or recoupment was ever claimed or asserted in the court below or that the "Conemaugh" has ever been called upon to respond to the claims of her cargo underwriters. Not having been passed upon in the court of original jurisdiction, this court is not disposed to hold that the lower court erred in

passing the matter over. *Harding* v. *Giddings,* 19 C. C. A., 508. *Lloyd* v. *Preston,* 146 U.S.,630. Neither do we think that innocent third parties should be longer delayed in the collection of cargo damages, by the delay incident to sending this case back for the purpose of allowing such pleadings as would properly present the question. The appellants not being obliged to assert their cross demand or claim for contribution by way of recoupment in this cause did not do so. This leaves them free to assert their claim for contribution in an independent proceeding against the "Conemaugh." No special equity appearing, this will be no injustice. The motion to remand with leave to amend the pleadings is, therefore, denied.

2. We come, now, to the question of the rate of interest upon the decree allowed. The Supreme Court directed that the District Court should enter a decree in conformity with the opinion, "with interest from July 3, 1896, until paid, "at the same rate per annum that decrees bear in the courts "of the State of Michigan." In fixing 7 per cent. as the rate which decrees bear in the courts of Michian, the learned District Judge held that the 8th Section of Ch. 6 Revised Statutes of Michigan, 1838, as amended in 1855, was still in force. That section, as thus amended, has been carried forward into the various compilations of the Michigan Statutes and appears now among the laws in force as 4865 Compiled Laws of Michigan of 1897. This section reads as follows:

> "Interest may be allowed and received upon all judgments at law, for the recovery of any sums of money, and upon all decrees in chancery for the payment of any sums of money, whatever may be the cause or form of action or suit in which such judgment or decree shall be rendered or made; and such interest may be collected on execution, at the rate of 7 per centum per annum;

> Provided, that on a judgment rendered or any written instrument, having a different rate, the interest shall be computed at the rate specified in such instrument not exceeding 10 per centum."

The same section is also found in the Compiled Laws of 1857 as Section 1317, and in the Compiled Laws of 1871 as Section 1635, and in Howell's Statutes as Section 1597. The contention is that this section of the old Act of 1838 has been repealed, altered or amended so that the rate of interest on decrees is now 5 per cent.

The amounts involved being large and interest having started in July, 1896, the question is one of much importance to the parties. That the legal rate of interest, in the absence of contract on money and all forms of contract, is now 5 per cent., is conceded. That judgments and decrees should continue to bear 7 per cent. in Michigan, if true, is a curious anomaly. Odd as it may appear and harsh as may be the result, it is, nevertheless, a question depending upon the ordinary rule touching the repeal or amendment of laws by implication, for it is not pretended that there has been any express repeal or amendment of the statute we have set out.

Without the aid of a statute or the order or rule of the court, interest is not a legal incident of either judgments or decrees. *Creuze* v. *Hunter*, 2 Vesey, 157; *Perkins* v. *Fourniquet*, 14 How., 328; *Washington* & *Rd.* v. *Harmon*, 147 U. S., 571, 585.

Without the special provision made by the 8th Section of the Michigan Act of 1838, the general provision fixing the legal rate of interest, found in the 3d Section of the same act, would not have applied to judgments and decrees.

The 3d Section of the act referred to was in these words:

> "The interest of money shall continue to be at the rate of seven dollars and no more, upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time. Provided, that in cases of money loaned it shall be lawful for the parties to stipulate in writing for the payment of any interest not exceeding 10 per cent. per annum."

This section was even carried forward as a distinct section in subsequent compilations of the laws and constitutes Section 1594 of Howell's Statutes.

The act which is supposed has amended or repealed the 8th Section of the Act of 1838 is an act passed in 1891 and found in Michigan Session Laws of 1891, p. 197. That act and its caption is as follows:

> "Sec. 1. An Act to regulate the interest of money on account, interest on money judgments, verdicts, etc.
>
> "The people of the State of Michigan enact: That the interest of money shall be at the rate of six dollars upon one hundred dollars for a year and at the same rate for a greater or less sum and for a longer or shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest not exceeding 8 per cent. per annum; Provided, that this act shall not apply to existing contracts, whether the same be either due, not due, or part due.
>
> "Sec. 4. All acts or parts of acts contravening the provisions of this act are hereby repealed."

This act was itself amended in 1899 so as to reduce the rate to 5 per cent. Act 207 Public Acts of 1899.

The repealing clause of the Act of 1891 is limited to "all acts or parts of acts contravening the provisions of this "act."

Confessedly no act or part of an act is thereby repealed,

unless it contravenes the provisions of the Act of 1891. Though there are other acts which relate to the subject of interest, yet those acts must stand unless their provisions are repugnant to the later law.

Counsel for the appellees have called to our attention a number of special provisions of the law of Michigan relating to interest which were in force when the Act of 1891 was passed. Thus, Section 1195, Howell's Statutes, provides for interest on certain educational funds of the state, and Section 1196 provides for interest on the University fund. This last section the Supreme Court of Michigan, in *University Regents* v. *Auditor General*, 109 Mich., 134, held, had not been affected by the Act of 1891.

Besides these there are Sections 3912 and 10470 of Howell's Statutes, one fixing a special rate for money due for delinquent taxes, while the other provides for a special rate in judgments against incorporated banks.

To construe the Act of 1891 as operating to fix the rate of interest at 5 per cent. upon all obligations requiring the payment of money, would alter, repeal or amend every one of the special acts above referred to, though it is plain that there is no necessary repugnance between those acts and the Act of 1891.

Aside from the caption of this Act of 1891, it could not be well supposed that the Legislature intended to deal with interest upon judgments and decrees. That subject had always been regulated by special legislation without which neither judgments nor decrees would necessarily bear interest. The caption does refer to interest upon "judgments, " verdicts, etc.," but the body of the act makes no more reference to such obligations than did the 3d Section of the Act of 1838, which was in substantially the same words. If the

whole subject of interest on judgments and decrees was dependent upon this Act of 1891, it is quite plain that neither would bear interest by virtue of its terms.

Neither does the caption refer to the subject of interest upon decrees as distinguished from judgments. The Act of 1842, Section 966, Revised Statutes of the United States, regulates the subject of interest upon *judgments*. This has been held not to apply to decrees. *Perkins* v. *Fourniquet*, 14 How., 328, 331; *Hagerman* v. *Moran*, 75 F. R., 99.

Much stress has, however, been laid upon the title of this act as indicating a purpose to include the subject of interest upon "judgments, verdicts, etc.," meaning thereby "decrees" as of like character with judgments.

While the title of an act should not be altogether ignored and may afford a key to unlock the meaning of a very doubtful statute, yet the title of an act can not be used to extend the provisions of an act so as to include with its scope that which without such aid would plainly not be included. *Hayden* v. *Barney*, 5 Wall., 107; *Goodlett* v. *L. & N. R. Co.*, 122 U. S., 391, 408; *United States* v. *Palmer*, 3 Wheat., 610.

That the special provisions of the Michigan Statutes in respect to interest upon judgments and decrees are not necessarily inconsistent with the provision for the reduction of the general rate of interest upon contracts implied or express and not reduced to judgments or decrees is to our minds very plain. The two subjects had always theretofore been regulated by distinct provisions of law.

The Act of 1891 was plainly intended to displace the existing general law as embodied in the 3d Section of the Act of 1838, but we find no such repugnancy to the 8th Section of the same statute as to justify us in holding that

it has been repealed or amended by the later act. *State* v. *Stoll,* 17 Wall., 431; *Henderson's Tobacco,* 11 Wall., 652.

Section 8 of the Act of 1838 was a special act dealing only with the subject of interest upon judgments and decrees, which, without such legislation, would not, as a legal incident, bear interest.

The Act of 1891 may well be regarded as dealing only with the subject of interest as regulated by the 3d Section of the same Act of 1838. Though both Section 8 of the Act of 1838 and the Act of 1891 deal with the subject of interest, yet they can both stand together without inconsistency.

In such circumstances neither a repeal nor amendment of the older act will occur by implication alone.

The purpose of the more general of the two acts relative to the same general subject is not necessarily repugnant to a different interest in regard to interest upon a particular class or kind of obligations. The purposes of the general rule in respect to legal interest in cases not particularly provided for may be effectuated without implying a change of intention in respect of particular matters specifically dealt with in prior legislation. Where two distinct acts relate to the same general subject, one will not repeal the other by implication unless the later act is plainly intended to cover the whole field or is manifestly repugnant to the older law. *Rogers* v. *N. C. & St. L. R. Co.,* 33 C. C. A., 517.

3. It is assigned as error that the District Court decreed that the appellants should pay one-half of all the costs of this cause "in the Circuit Court of Appeals."

This was error, as those costs were included in the costs taxed in the Supreme Court and provided for by another part of the decree below.

The decree will in this respect be modified and in all other respects affirmed.